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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : **HON'BLE MR. S.R.NAYAK, C.J. AND**
HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.4103 OF 2000

Petitioner : Brijmohan Tambi aged about 44 years, S/o Shri Madanlal Tambi, Voluntarily Retd. as L.D.C. Water Resources Deptt. Bemetara, Distt. Durg. Present Address: C/o R.K.Traders, Rajnandgaon (M.P.)

versus

Respondents :

1. State Govt. of Chattisgarh through the Secretary Ministry of Water Resources D.K.S. Bhawan Raipur Chattisgarh
2. Chief Engineer, Water Resources Deptt. Mahanadi Godawari Basin, Shankar Nagar Chowk, Raipur
3. Executive Engineer, Water Resources Deptt. Bemetara
4. Executive Engineer, Water Resources Deptt. Rajnandgaon
5. Engineer-in-Chief Water Resources Deptt. Raipur

Present : Mr. Ajay Shrivastava, counsel for the petitioner.

Mr. Utkarsh Verma, Deputy Government Advocate for the respondents/State.

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ORAL ORDER
(Passed on 12th of September, 2006)

The following order of the Court was passed by **S.R.Nayak, C.J.** :

On an application made by the petitioner herein on 1-12-1995, seeking voluntary retirement under the Voluntary Retirement Scheme, the Chief Engineer, Mahanadi Godawari Kachhar, Water Resources Department, Raipur submitted his recommendation to the Engineer-in-Chief, Water Resources Department, Raipur, opining that if the period between 1-7-1991 to 3-11-1995 during which period the petitioner absented himself unauthorizedly, is excluded, he would not put in qualifying service of 20 years so as to seek voluntary retirement under the Voluntary Retirement Scheme.

2. At that stage, Original Application No.306 of 1998 was instituted before the Madhya Pradesh Administrative Tribunal, Bench Raipur (for short 'the Tribunal'). The Tribunal, having opined that the proposal of the Chief Engineer, Mahanadi Godawari Kachhar, Water Resources Department, Raipur is only a recommendation and the State Government has yet to pass appropriate order on the application made by the petitioner on 1-12-1995, by order dated 21-2-2000, disposed of the original application, directing the State Government to consider the application of the petitioner and pass appropriate order within a period of three months from the date of receipt of a copy of the order.

3. Quite curiously, this writ petition has been filed by the petitioner under Article 226/227 of the Constitution of India against such order. It cannot be gainsaid that it is for the State Government to consider

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the application of the petitioner and pass appropriate order under the Voluntary Retirement Scheme. It is well settled that even if the petitioner fulfils the eligibility criteria under the Voluntary Retirement Scheme to seek voluntary retirement, it is not his vested right to insist that as a matter of legal obligation, the State Government – employer should accept his application and he should be permitted to retire voluntarily. It is the discretion of the State Government – employer to permit or not to permit unless the Statute otherwise provides/directs.

4. Be that as it may, in this case, it is the specific contention of the immediate superior of the petitioner, namely, the Chief Engineer, Mahanadi Godawari Kachhar, Water Resources Department, Raipur that the petitioner absented himself unauthorizedly for number of years, i.e., 1-7-1991 to 3-11-1995. If this allegation is true, that will be a circumstance not to exercise the discretion of this Court under Article 226 of the Constitution of India in favour of the petitioner who is guilty of unauthorizedly absenting for years from the duty at the peril of public service.

5. In the result, we dismiss the writ petition. No costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Gopal